IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7546 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KUTCH DISTRICT PANCHAYAT

Versus

GAJENDRA B THAKKAR

Appearance:

1. Special Civil Application No. 7546 of 1998

MR HS MUNSHAW for Petitioner No. 1

MR SANDEEP N BHATT for Respondent No. 1

MR KV GADHIA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 18/11/2003

ORAL JUDGEMENT

Heard learned advocate Mr.H.S.Munshaw appearing on behalf of the petitioner and learned advocate Mr.Biren Vaishnav for Mr.K.V.Gadhia on behalf of the respondent workman.

#. In the present petition, the petitioner Panchayat has challenged the award passed by the Labour Court, Bhuj in Reference No.340 / 1996 [old No.514 / 1991] dated 30th April, 1998 wherein the labour court has set aside the termination order dated 13th October, 1982 and granted reinstatement with continuity of service with 50 % backwages from the date of Reference dated 17th July, 1990.

#. Learned advocate Mr.Munshaw has submitted that the labour court has committed gross error in entertaining the Reference after period of 8 years because there was gross delay on the part of the workman to raise the industrial dispute. He also submitted that the labour court has committed gross error in granting 50 % backwages of the interim period when there is gainful employment is proved by admission of the workman. He also submitted that at the most service of the workman rendered only for two years and that too as the daily wager and therefore, such relief granted in favour of the workman amounts to giving premium to the daily wager which ultimately he may claim benefit of regularisation. He also submitted that the workman has left the job at his own and there was no termination order passed by the petitioner. Therefore, according his submission, the labour court has committed gross error in passing the award in favour of the respondent workman.

#. Learned advcoate Mr.Biren Vaishnav for the respondent has submitted that no doubt there was delay of about eight years in raising the industrial dispute but on the other hand, the labour has not granted any amount of backwages of the interim period for said delayed period of eight years. The labour court has only granted 50 % backwages from the date of reference. He also submitted that some admission of gainful employment which has rightly been taken into account by the labour court and therefore, the labour court has not committed any error while passing such award. He also submitted that provisions of Section 25-F of the I.D.Act, 1947 has not been followed though the workman had completed continuous service of 240 days and this aspect has been clearly proved based on the evidence produced by the petitioner. Therefore, once Section 25-F of the I.D.Act, has been violated, the order of termination becomes ab initio void as held by the Apex Court in case of MOHAN LAL VS. MANAGEMENT OF M/S BHARAT ELECTRONICS LTD. reported in AIR 1981 SC 1253. Therefore, according to the respondent, labour court has rightly passed the award granting relief in favour of the workman. However, both

the learned advocates for the parties, left the matter to the discretion of this Court for reducing the backwages of the interim period if ultimately this Court deem it fit in the facts and circumstances of the case.

#. I have considered submissions made by the learned advocates for the parties and perused the award passed by the labour court. I have also considered the documents which are produced on record by the petitioner before the labour court as well as before this Court. Considering the actual working days of the workman produced by the petitioner, it is clear that the workman had completed more than 334 days actual working, means, before termination order, the workman had completed 240 days continuous service, for that, there is no dispute between the parties. It is also undisputed between the parties that procedure under Section 25-F of the I.D.Act has not been followed and that renders the termination order ab initio void. Now the only question is required to be examined whether the labour court has rightly granted 50 % backwages of the interim period from the date of Reference. There is clear admission of the workman that he was doing some miscellaneous colour works for the period from 1982 continuously and therefore, what amount has been earned by the workman, was not disclosed by the workman. Even otherwise, considering the daily rate prevailing at the relevant time, according to my opinion, 50 % backwages of the interim period from the date of reference is on quite higher side. On the other hand, it is necessary to bear in mind that the petitioner is a public body and State Authority and ultimately the burden will be on the public exchequer. The respondent workman had worked only for a period of two years as daily wager and the other aspect that there was delay of eight years in raising the industrial dispute. Therefore, considering all these surrounding and overall circumstances of the case, the backwages granted by the labour court requires to be reduced and therefore, according to my opinion, if the backwages is reduced to 20 % from 50 % as awarded by the labour court for the interim period from the date of reference, will meet the ends of justice between the parties. However, this Court is of the view that the labour court has rightly granted the reinstatement with continuity of the service and relief of reinstatement granted by the labour court is confirmed and not disturbed by this Court.

#. In the result, present petition is partly allowed. The order of granting reinstatement with continuity of service is ordered to be intact and not disturbed by this Court but the award of granting 50 %

backwages of the interim period from the date of reference is reduced to 20 % accordingly.

At this stage, learned advocate Mr.Vaishnav submits that the workman is out of job for more than twenty years and therefore some suitable directions may be issued on the petitioner to comply with the order passed by this Court within some reasonable time. Considering the request, the petitioner is directed to comply with the present order within two months from the date of receipt of copy of this order, means, the petitioner shall reinstate the respondent workman in service as per the order of this Court within two months and shall also pay the backwages at the rate of 20 % from the date of reference accordingly.

Rule is made absolute to the extent indicated above with no order as to costs.

Date : 18.11.2003 [H.K.Rathod, J.]

#kailash#